

Request for Reconsideration:

Claims 1-12 and 67-69 are under consideration for prosecution on the merits, of which claim 1 is independent. Applicants are making no amendments in this response. Applicants respectfully request that the Examiner reconsider the above-captioned patent application in view of the following remarks.

Remarks:

1. Rejections.

Claims 1-3, 5-8, 12, 68, and 69 stand rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Patent Application Publication No. US 2005/0192604 A1 to Carson et al. ("Carson") in view of Patent Application Publication No. US 2002/0161383 A1 to Akin et al. ("Akin") and Patent No. US 5,456,714 A to Owen, and further in view of Patent No. US 5,904,697 A to Gifford et al. ("Gifford"). Claims 4, 9, and 67 stand rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Carson, Akin, Owen, and Gifford, as applied to claim 1, and further in view of Patent Application Publication No. WO 00/24339 A1 to Berreklouw. Claim 10 stands rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Carson, Akin, Owen, and Gifford, as applied to claim 1, and further in view of Patent No. US 6,814,750 B2 to Kavteladze et al. Claim 11 stands rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Carson, Akin, Owen, and Gifford, as applied to claim 1, and further in view of Patent No. US 6,554,848 B2 to Boylan et al. The Office Action makes these rejections **final**. Applicants respectfully disagree.

2. Independent Claim 1.

The Office Action rejects claims 1 as allegedly rendered obvious by Carson in view of Akin, Owen, and Gifford. In order to establish a prima facie case of obviousness, the Office Action must fulfill three (3) basic criteria. MPEP 2142 and 2143. First, there must be some clear and explicit articulation of the reason(s) why the claimed invention would have been obvious, either in the references themselves or in the knowledge generally available to those of ordinary skill in the art, to modify the primary reference as proposed by the Office Action. Second, there must be a reasonable expectation of success. MPEP 2143.02. To satisfy this criterion, the Office Action must demonstrate that "one skilled in the art could have combined

the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art.” MPEP 2143.02. Third, the cited references or the knowledge generally available to those of ordinary skill in the art must disclose or suggest all of the claim limitations. MPEP 2142. For the reasons set forth below, the Office Action fails to establish a prima facie case of obviousness.

Independent claim 1 describes “a clamping portion extending from said base portion, said clamping portion configured to elastically move from a clamped position substantially corresponding to a shape of said saddle to an unclamped position not corresponding to the shape of said saddle.” In addition, claim 1 describes that “a connection portion configured to connect said clamping portion to said channel and limit the axial position of said clamping portion in the unclamped position relative to said saddle.” (Emphasis added.) The Office Action acknowledges that Carson, Akin, and Gifford fail to disclose the claimed clamping portion. Office Action, Page 6, Lines 1-5. Nevertheless, the Office Action contends that it would have been obvious to modify Carson with Owen’s locking ring 4 to achieve the claimed invention. Office Action, Page 6, Lines 6-14. Applicants respectfully disagree.

Owen depicts a tube 1 connected to a flange 2. Owen, Col. 2, Lines 46-53; **Fig. 2**. A separate locking ring 4 may be arranged to slide axially along tube 1 until holes 5 of locking ring 4 engage spikes 3 of flange 2 disposed within a target blood vessel. Owen, Col. 3, Lines 31-41; **Figs. 5 and 6**. Owen’s locking ring 4, however, is not connected to tube 1. Moreover, the Office Action fails to demonstrate a reasonable expectation of success that connecting locking ring 4 to tube 1 or Carson’s channel 32 to limit locking ring’s axial position would provide sufficient clamping of a target vessel or otherwise not change the respective

function of locking ring 4. MPEP 2143.02. In addition, the proposed modification of Owen's locking ring 4 impermissibly changes its principle of operation, as locking ring 4 is required to slide freely along tube 1 in order to engage spikes 3 of flange 2 to provide sufficient clamping. MPEP 2143.01(VI). Accordingly, modifying Carson with Owen's locking ring 4 would result in a clamping portion that is not connected to the channel. Thus, Carson in view of Akin and Owen, and Gifford, whether taken alone or in combination, fails to disclose or suggest all of the claim limitations. Therefore, at least for this reason, Applicants respectfully request that the Examiner withdraw the obviousness rejection of independent claim 1.

3. Dependent Claims 2-12 and 67-69.

Each of claims 2-12 and 67-69 ultimately depends from independent claim 1. "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." MPEP 2143.03 (citations omitted). Therefore, at least for this reason, and in view of the foregoing remarks with regard to claim 1, Applicants respectfully request that the Examiner withdraw the obviousness rejections of dependent claims 2-12 and 67-69.

Moreover, claims 9 and 67 describe a "pair of legs configured to bias said clamping portion towards said saddle in the clamped position." The Office Action acknowledges that each of Carson, Akin, Owen, and Gifford fails to disclose this limitation. Office Action, Page 8, Lines 15-16. Nevertheless, the Office Action contends that it would have been obvious to modify Carson with the outer flange 114 of Berreklouw to achieve the claimed invention. Office Action, Page 8, Lines 16-22. Applicants respectfully disagree.

Berreklouw depicts a target vessel 2 that is secured between a unitary outer flange 14, 114 and arms 11, 111 that form an inner flange. Berreklouw, Page 21, Lines 27-33; **Figs. 2-5.** Outer flange 14, 114 has a "radius of curvature K which is essentially equal to the radius of curvature R of the target vessel 2, 1." Berreklouw, Page 22, Lines 25-26. Accordingly,

arms 11, 111 are deformed to engage the fixed unitary flange 14, 114 to secure the anastomotic device of **Figs. 2-5** to a target vessel. As shown throughout Berreklouw's figures, outer flange 14, 114,¹ does not constitute "a pair of legs" and instead outer flange 14, 114 acts as a saddle on the outer surface of target vessel 1, 2 against which inner flange 11, 111 is clamped to secure target vessel 1, 2. Thus, Berreklouw fails to disclose or suggest a "pair of legs configured to bias said clamping portion towards said saddle in the clamped position," as set forth in claims 9 and 67. Therefore, at least for this additional reason, Applicants respectfully request that the Examiner withdraw the obviousness rejections of dependent claims 9 and 67.

¹ Berreklouw states that, "The anastomotic device in Figure 5 is of corresponding construction and the same reference numerals raised by 100 have been used for the corresponding parts, this also being the case with regard to corresponding components which are yet to be discussed." Berreklouw, Page 21, Lines 18-20. Accordingly, flange 114, which is shown in a cross-section of **Fig. 5**, has a substantially identical structure as flange 14, which is shown in **Fig. 2**.

Conclusion:

Applicants maintain that the above-captioned patent application is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that the prosecution of this application may be furthered by discussing the application, in person or by telephone, with Applicants' representatives, we would welcome the opportunity to do so.

Applicants respectfully submit that fees in the amount of **\$65.00** for a one-month extension of time to respond (Fee Code 2251) are due as a result of this submission. Nevertheless, in the event of any variance between the fees determined by Applicants and the fees determined by the PTO, please charge or credit any such variance to the undersigned's **Deposit Account No. 02-0375**.

Respectfully submitted,
BAKER BOTTS, L.L.P.

Dated: **November 22, 2010**

By: /William S. Foster, Jr./
William S. Foster, Jr.
Registration No. 51,695

Baker Botts, L.L.P.
The Warner
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2400
Tel.: (202) 639-7700
Fax: (202) 508-9338

WSF/